



Dan Bucks
Director

Montana Department of Revenue

BUSINESS & LABOR

EXHIBIT NO. 2

DATE 3-17-09

FILE NO. SB 395



Brian Schweitzer
Governor

October 27, 2008

Malt Beverage Industry Members:

In light of several proposed mergers and acquisitions at the manufacturing tier of the beer industry, it is appropriate for the Montana Department of Revenue, Liquor Control Division to clarify the relevant portion of the Montana Alcoholic Beverage Code (MABC).

The MABC governs Brewers, Beer Importers and Beer Wholesalers, among others. These statutes are intended to assure continued interbrand competition in malt beverage sales through competing independent wholesalers and to assure breweries the ability to protect the reputations of their product through quality control regulations.

The statutory provisions of Title 16, Chapter 3, Part 2, MCA, establish certain mandatory provisions for contracts and franchise agreements between brewers and wholesalers. In addition, certain conduct in connection with these agreements is prohibited. Wholesalers must have territorial assignments within Montana in which they will sell their respective product brands. (Sections 16-3-220, -222, MCA.) It is unlawful for any brewer to cancel or terminate any agreement, except for just cause, or in accordance with the current terms and standards established by the brewer which are then equally applicable to all wholesalers and all such agreements. (Section 16-3-221, MCA.)

Section 16-3-222, MCA, specifically lists mandatory provisions that must be set forth in brewer-wholesaler agreements. The parties to such agreements shall mutually determine the size or extent of the area in which the wholesaler may sell or distribute product brands, and once the territory is agreed upon it may not be changed without the mutual consent of both parties. The specific brands to be distributed by the wholesaler must be set forth. The wholesaler must be free to manage the business in the manner that the wholesaler considers best, including the exclusive right to establish selling prices, to select the brands the wholesaler wishes to distribute, and to determine what effort and resources the wholesaler will exert in the promotion and sale of products. In addition, the statute requires a procedure be set forth in the agreement for the review of alleged wholesaler deficiencies, and requires the brewer to provide the wholesaler a 60-day written notice before terminating the agreement. All agreements must be interpreted and governed by the laws of Montana, and any litigation arising under the agreements must take place in a Montana court, either federal or state. Agreements must recognize a party's right to a jury trial under the Montana constitution.

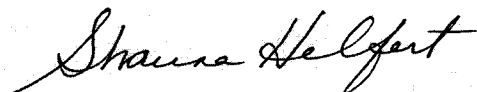
The purpose of this letter is to clarify that the established territorial assignments and the MABC provisions regarding such territorial assignments including but not limited to termination for just cause and the constitutional right to a jury trial under the Montana

constitution **are not affected** by a transfer in ownership of the manufacturer of a brand or the creation of a new entity due to a merger of one or more manufacturers of a brand. Furthermore, a change in the identity of the holder of the license to manufacture a beer brand does not affect the territorial assignments of a brand to a wholesaler or the legal rights or responsibilities related to the brand.

In conclusion, any change at the manufacturing tier related to a brand does not affect the territorial assignment for that brand to a wholesaler or the rights of the wholesaler related to the brand under Montana law, as long as the brand continues to be distributed in Montana.

Please contact me if you have questions on this or other matters in the future.

Respectfully,

A handwritten signature in cursive script that reads "Shauna Helfert".

Shauna Helfert, Administrator
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c: Montana Wholesalers/Distributors

February 16, 2009

Mr. Chairman, Committee Members

For the record, my name is Brian Clark. I am the President and managing partner of Fun Beverage, Inc. a Kalispell based Beer, Wine and Soft Drink distributor and Vice President of the Montana Beer and Wine Distributors Association.

I apologize for not appearing in person and truly regret that I am unable to speak to you directly. My absence in no way diminishes my strong support for Senate Bill 395.

Senate Bill 395 is nothing more than the clarification of ambiguities of existing laws currently and historically exercised by the State of Montana as granted under the 21st Amendment of the Constitution. Montana, like essentially every state in the union inserted a middle tier (the wholesaler/distributor tier) between the manufacturer tier and the retailer tier in order to best achieve four primary objectives 1). Prevent the abuses that led to probation. 2). Provide for the orderly sale and distribution of alcohol reflective of the rules, values and laws of the state of Montana. 3). Provide for the efficient collection of state excise taxes and 4). Encourage moderation and temperance reflective of the values of the state of Montana.

The keystone, pun intended I sell Keystone Light, of these franchise laws, is **state based distributor independence**.

Your predecessors enacted Beer franchise legislation codified in MCA sections 16-1-101, 16-3-221 and 16-3-222 which have, until now, effectively and efficiently addressed **distributor independence** and that delicate balance between economic efficiency and public interest.

The top 3 Brewers in the US which represent over 80% of US volume are now all foreign owned. And, with global consolidation, brewers are pushing for distributor consolidation in order to improve their efficiencies and exert excessive influence on distributors thereby weakening **distributor independence** and creating distributors whom are nothing more than pseudo extensions of the brewer – exactly what the 21st Amendment and the uniquely American Three Tier System of alcohol distribution were designed to prevent.

In other parts of the country, the newly formed Miller/Coors JV has challenged state franchise laws specifically using its new ownership entity and/or vaguely defined “termination for cause” in order to consolidate its distributor network to be brand aligned.

Fortunately I am a consolidated Miller/Coors distributor, but were I not, should Miller/Coors be allowed to summarily terminate my decade’s long relationship simply citing that I don’t have a relationship with the new Miller/Coors entity even though I have separate existing contracts with each? I am proud to say that Fun Beverage, Inc. is the third largest Kokanne distributor in the US. But now that InBev the owner of Kokanne recently purchased Anheuser Busch, should Anheuser Busch-InBev summarily terminate Fun Beverage, Inc. in order to consolidate its portfolio of brands to my cross town competitor? I purchased the Miller distributor in 1999 in order to survive. Diversity and critical mass are essential to economic viability and distributor independence in Montana. Losing Miller, Coors or Kokanne could put me out of business. Although I cite personal examples, no distributor is immune from global supplier consolidation.

Section 16 MCA franchise law as currently written may already prohibit this, but in light of global consolidation and the precedent of subsequent forced distributor consolidation it may not! As a distributor, I accept termination for cause based on deficiency, poor performance or non-compliance, but I cannot accept 27 years of business destroyed simply because consolidated foreign owned brewers want fewer distributors so that they can be more efficient.

Please support Senate Bill 395.